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MAY 31 2006

OFFICE OF PETITIONS

In re Application of
Varney
Application No. 10/658,277
Filed: September 10, 2003
Title: Heat Exchanger Optimization Process
and Apparatus

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ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed December 30, 2005. In the alternative, petitioner has requested that the petition be treated as a petition to revive under 37 CFR 1.137(b).

The petition to withdraw the holding of abandonment is **GRANTED**.

The petition to revive under 37 CFR 1.137(b) is **Dismissed as Moot**.

This above-identified application became abandoned for failure to timely file a proper response to a final Office Action which was mailed on June 3, 2005. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time pursuant to 37 CFR 1.136(a) were obtained. Accordingly, this application was held abandoned on September 3, 2005. This decision precedes the mailing of a Notice of Abandonment.

In the present petition, petitioner contends the a Notice of Appeal, a petition for one month extension of time and a credit card payment form were submitted on October 3, 2005. Petitioner states the reply was faxed to the number of the Board of Patent Appeals and Interferences at (571) 273-0053. To support petitioner's contention, petitioner has provided a copy of the reply which contains a certificate of transmission with a date of October 3, 2005. Petitioner has also provided a copy of the sending unit's transmission report.

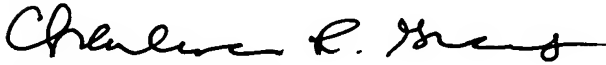
The response submitted October 3, 2005 has not been located in the Office, however, in view of the evidence submitted, the response is deemed timely. Petitioner however is cautioned that all correspondence (with a few exceptions) transmitted by facsimile should be directed to the central facsimile number of (571) 273-8300. MPEP 502.01.

The Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn.

The two-month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 CFR 1.17(c)), runs from the date of this decision. See 37 CFR §§ 41.31 and 41.37.

The application is being forwarded to the Art Unit 3744 for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Charlema R. Grant", is written above the printed name.

Charlema R. Grant
Petitions Attorney
Office of Petitions